

UNITED STATES COURT OF APPEALS

**Filed 7/3/96**

FOR THE TENTH CIRCUIT

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VINCENT A. APODACA,

Plaintiff-Appellant,

v.

JUDY UPHOFF, individually and in her official capacity as Director, Wyoming Department of Corrections; ROBERT E. ORTEGA, individually and in his official capacity as Deputy Director, Wyoming Department of Corrections; DUANE SHILLINGER, individually and in his official capacity as Warden, State Penitentiary Wyoming Department of Corrections; BILL HETTGAR, individually and in his official capacity State Penitentiary Medical Administrator, Wyoming Department of Corrections; JAMES FERGUSON, individually and in his official capacity as State Penitentiary Deputy Warden, Wyoming Department of Corrections; ARCHIE KIRSCH, individually and in his official capacity as State Penitentiary Medical Doctor, Wyoming Department of Corrections,

Defendants-Appellees.

No. 95-8070  
(D.C. No. 95-CV-10)  
(D. Wyo.)

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## ORDER AND JUDGMENT\*

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Before PORFILIO, BRIGHT,\*\* and KELLY, Circuit Judges.

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After examining the briefs and appellate record, this panel has determined unanimously that oral argument would not materially assist the determination of this appeal. See Fed. R. App. P. 34(a); 10th Cir. R. 34.1.9. The case is therefore ordered submitted without oral argument.

Plaintiff Vincent A. Apodaca appeals from an order of the district court dismissing his complaint filed pursuant to 42 U.S.C. § 1983 for failure to prosecute. We affirm.

The district court may dismiss an action for lack of prosecution if, after consideration of all the relevant factors, it concludes dismissal is the most appropriate sanction to satisfy the interests of justice. See, e.g., Ehrenhaus v. Reynolds, 965 F.2d 916, 920-21 (10th Cir. 1992). “Determination of the correct sanction . . . is a fact-specific inquiry that the district court is best qualified to

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\* This order and judgment is not binding precedent, except under the doctrines of law of the case, res judicata, and collateral estoppel. The court generally disfavors the citation of orders and judgments; nevertheless, an order and judgment may be cited under the terms and conditions of 10th Cir. R. 36.3.

\*\* Honorable Myron H. Bright, Senior Circuit Judge, United States Court of Appeals for the Eighth Circuit, sitting by designation.

make.” Id. at 920. Therefore, we review the district court’s sanction of dismissal in this case for abuse of discretion. Mobley v. McCormick, 40 F.3d 337, 340 (10th Cir. 1994).

The district court reviewed both the magistrate judge’s recommendation and the record and concluded that the history of the suit “clearly demonstrates plaintiff’s continuing obstreperous lack of cooperation in the discovery process and a cavalier disregard for the rules of this Court governing discovery.” R. Vol. II, tab 55 at 4. The court also noted that plaintiff had made no attempt to justify his actions as requested in the magistrate judge’s show cause order.

We have reviewed the record. While plaintiff offers reasons for his actions, these reasons are specious. Plaintiff has presented no valid reasons either before the district court or before this court why the sanction of dismissal of his action for failure to prosecute was an abuse of discretion.

The judgment of the United States District Court for the District of Wyoming is AFFIRMED. The mandate shall issue forthwith.

Entered for the court  
Per curiam